

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling of	)	CC Docket No. 01-92
T-Mobile USA, et al.	)	
	)	DA 02-2436
Petition of US LEC Corp. for Declaratory	)	
Ruling Regarding LEC Access Charges for	)	
CMRS Traffic	)	

**REPLY COMMENTS  
OF THE  
ALABAMA RURAL LOCAL EXCHANGE CARRIERS  
("Alabama Rural LECs")**

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Brindlee Mountain Telephone Company, Inc.  
Butler Telephone Company, Inc.  
CenturyTel of Alabama, LLC  
Frontier Communications of Alabama, Inc.  
Frontier Communications of Lamar County, Inc.  
Frontier Communications of the South, Inc.  
Farmers Telephone Cooperative, Inc.  
Graceba Total Communications, Inc.  
GTC, Inc.  
Gulf Telephone Company  
Hayneville Telephone Company, Inc.  
Hopper Telecommunications Company, Inc.  
Interstate Telephone Company  
Millry Telephone Company, Inc.  
Mon-Cre Telephone Cooperative, Inc.  
Moundville Telephone Company, Inc.  
National Telephone of Alabama, Inc.,  
New Hope Telephone Cooperative, Inc.  
Oakman Telephone Company  
OTELCO Telephone LLC  
Peoples Telephone Company  
Pine Belt Telephone Company, Inc.  
Ragland Telephone Company  
Roanoke Telephone Company, Inc.  
Union Springs Telephone Company, Inc.  
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November 1, 2002

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## SUMMARY

The Alabama Rural LECs<sup>1</sup> file these Reply Comments in regard to the Petition for Declaratory Ruling filed on September 18, 2002, by US LEC Corp. (the “US LEC Petition”) and Petition For Declaratory Ruling filed on September 6, 2002, by certain commercial mobile radio service (CMRS) providers (the “T-Mobile Petition”).

In regard to the US LEC petition, the Alabama Rural LECs concur with the comments filed by other rural LECs supporting the principle that the respective obligations of an originating or terminating LEC and an IXC should not change merely because the network at the other end of the long distance call is a CMRS network. The Alabama Rural LECs have insufficient information, however, to address the particular factual situation surrounding the US LEC request.

In regard to the T-Mobile Petition, state tariffs provide an essential mechanism for compensation for CMRS traffic terminated via a Regional Bell Operating Company (“RBOC”) tandem *until* an individual interconnection agreement is established. In some instances a wireless termination tariff may be the only way to obtain compensation for terminating wireless traffic that can be delivered to a rural LEC via a BellSouth tandem without the LECs’ prior consent or notice.

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<sup>1</sup> See text of these Comments at 1-2 for definition.

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To: Wireline Competition Bureau  
Wireless Telecommunications Bureau

**REPLY COMMENTS  
OF THE  
ALABAMA RURAL LOCAL EXCHANGE CARRIERS**

Ardmore Telephone Company, Blountsville Telephone Company, Brindlee Mountain Telephone Company, Inc., Butler Telephone Company, Inc.,<sup>2</sup> CenturyTel of Alabama, LLC, Frontier Communications of Alabama, Inc., Frontier Communications of Lamar County, Inc., Frontier Communications of the South, Inc. (formerly Southland Telephone Company), Farmers Telephone Cooperative, Inc., Graceba Total Communications, Inc., GTC, Inc. (formerly the Florala Telephone Company), Gulf Telephone Company, Hayneville Telephone Company, Inc., Hopper Telecommunications Company, Inc., Interstate Telephone Company, Millry Telephone Company, Inc., Mon-Cre Telephone Cooperative, Inc., Moundville Telephone Company, Inc.,

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<sup>2</sup> On October 1, 1998, Grove Hill Telephone Corporation and Goshen Telephone Company, Inc., were merged with and into Butler Telephone Company, Inc., now doing business as TDS Telecom.

National Telephone of Alabama, Inc., d/b/a Cherokee Telephone Company, New Hope Telephone Cooperative, Inc., Oakman Telephone Company, OTELCO Telephone LLC, Peoples Telephone Company, Pine Belt Telephone Company, Inc., Ragland Telephone Company, Roanoke Telephone Company, Inc., Union Springs Telephone Company, Inc. and Valley Telephone Company (the “Alabama Rural LECs”), by counsel file these reply comments in response to the Petition for Declaratory Ruling filed by US LEC Corp. (the “US LEC Petition”) and the Petition for Declaratory Ruling filed by T-Mobile and other CMRS carriers (the “T-Mobile Petition”). As discussed below, the comments demonstrate why the US LEC petition should be granted, and the T-Mobile petition denied.

## **I.**

### **The US LEC Petition**

The Alabama Rural LECs concur with the comments filed by other rural LECs supporting the principle that the respective obligations of an originating or terminating LEC and an IXC should not change merely because the network at the other end of the long distance call is a CMRS network.<sup>3</sup> The Commission’s rules require interexchange carriers utilizing the networks of local exchange carriers to complete calls to pay access charges and the Commission has recognized that such charges apply to intra-MTA CMRS-originated calls involving an

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<sup>3</sup> Comments of Rural Iowa Independent Telephone Association, CC Docket No. 01-92, DA 02-2436, p. 1 (filed Oct. 18, 2002); Initial Comments of Minnesota Independent Coalition, CC Docket No. 01-92, DA 02-2436, p. 1 (filed Oct. 18, 2002).

interexchange carrier.<sup>4</sup> In addition, the Commission has determined that even CMRS providers must pay access charges for certain traffic terminated through non-IXC facilities, which would include non-local CMRS traffic terminated by the Alabama Rural LECs.<sup>5</sup> Accordingly, the Commission should affirm the right of LECs to payment of access charges from IXCs, regardless of whether a call originates or terminates on the network of a CMRS provider. The Alabama Rural LECs have insufficient information to comment on how this principle should be applied to any particular factual situation involving US LEC.

## II.

### The CMRS Carriers' Petition

The Alabama Rural LECs concur with the comments of several carriers who have pointed out the procedural deficiencies associated with the CMRS Petition.<sup>6</sup> In addition to these

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<sup>4</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 F.C.C.R. 15499, ¶ 1043 (1996) (judicial review history omitted) (“Local Competition Order”).

<sup>5</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, (the “First Report and Order”), CC Docket No. 96-98, ¶ 1043 reads in part:

Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges on traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.

<sup>6</sup> See e.g., Comments of The Missouri Small Telephone Company Group, CC Docket No. 01-92, DA 02-2436, pp. 4-27 (filed Oct. 18, 2002); Comments of Warriner, Gesinger & Associates, LLC, CC Docket No. 01-92, DA 02-2436, pp. 10-11 (filed Oct. 18, 2002); Comments of ICORE Companies, CC Docket No. 01-92, DA 02-2436, pp. 5-9 (filed Oct. 18, 2002); Comments of National Telecommunications Cooperative Association, CC Docket No. 01-92, DA 02-2436, pp. 2-10 (filed Oct. 18, 2002); Comments of Missouri Independent Telephone Company Group, CC Docket No. 01-92, DA 02-2436, p. 13 (filed Oct. 18, 2002); Comments of The Alliance of Incumbent Rural Independent Telephone Companies, CC Docket No. 01-92, DA 02-2436, pp. 6-21 (filed Oct. 18, 2002); Comments of Rural Iowa Independent

procedural defects, the comments filed in the initial comment cycle demonstrate conclusively why the Petition should be denied on the merits.

A. Under Current Regulations, CMRS Carriers Are Not Compelled to Negotiate Interconnection Agreements.

CMRS carriers, unlike LECs, cannot be compelled to negotiate interconnection agreements or to submit to state commission arbitration where negotiations are unsuccessful.<sup>7</sup> This is generally not a problem with direct CMRS-LEC interconnection, since the CMRS carrier must first go to the rural LEC to obtain facilities and/or specific services. However, the relief requested by the T-Mobile Petition would eliminate a needed incentive for CMRS carriers to commence good faith negotiations prior to delivering traffic indirectly to a rural LEC through an RBOC tandem. It would also encourage some carriers to continue to refuse to pay for the termination of traffic already delivered to the rural LECs through RBOC tandems.

This is not a theoretical problem, but an everyday reality in Alabama and other states where the majority of CMRS traffic terminating to rural LECs is routed through RBOC tandems and delivered over common trunk groups through which other non-CMRS traffic is delivered. This type of indirect interconnection makes it impossible for the Rural LECs to contemporaneously identify and block traffic originated by a CMRS carrier. Over the last two

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Telephone Association, CC Docket No. 01-92, DA 02-2436, pp. 2-7 (filed Oct. 18, 2002); Comments of Organization for the Promotion and Advancement of Small Telecommunications Companies, CC Docket No. 01-92, DA 02-2436, pp. 2-10 (filed Oct. 18, 2002); Comments of Nebraska Rural Independent Companies, CC Docket No. 01-92, DA 02-2436, pp. 7-15 (filed Oct. 18, 2002); Comments of Montana Local Exchange Carriers, CC Docket No. 01-92, DA 02-2436, pp. 3-7 (filed Oct. 18, 2002).

<sup>7</sup> See 47 U.S.C. §§ 251(b) and (c); *In the Matter of Communique Telecommunications, Inc., d/b/a Logically Application*, 14 F.C.C.R. 13635, 13649 (Aug. 9, 1999).

years, BellSouth has ceased compensating the Alabama Rural LECs for the termination of such indirect CMRS traffic as it has reached agreements with CMRS carriers to move to meet point billing.<sup>8</sup> Efforts by some of the Alabama Rural LECs to identify such traffic and bill CMRS carriers for such terminating indirect traffic are often ignored by CMRS carriers. In most cases, what AT&T Wireless calls “de facto bill and keep arrangements”<sup>9</sup> are not the result of a mutual agreement but the inability of the rural LECs to obtain the necessary information about the traffic terminated by CMRS carriers and to force such carriers to acknowledge their responsibility to pay for terminating traffic. As long as the majority of traffic between CMRS carriers and rural LECs originate with CMRS carriers,<sup>10</sup> there is a built-in incentive for such carriers to perpetuate the status quo. There is also a real threat that some CMRS carriers may attempt to take advantage of this “loophole” by increasing traffic volumes delivered through RBOC facilities. Indeed, according to several commentators this is already taking place.<sup>11</sup>

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<sup>8</sup> BellSouth’s decision to terminate payments to the Alabama Rural LECs for indirect CMRS traffic was the subject of a complaint proceeding before the Alabama Public Service Commission (“APSC”), which resulted in an order providing, among other things, for continuing APSC oversight to help ensure that the Rural LECs receive sufficient billing records to allow them to bill the originating CMRS carrier. *In Re: Inter-carrier Compensation*, Docket No. 28642 (Alabama Public Service Commission, September 12, 2002.). However, such measures will be of little use if the T-Mobile Petition is granted and there is no practical means of requiring such carriers to pay for the termination of such traffic.

<sup>9</sup> Comments of AT&T Wireless Services, CC Docket No. 01-92, DA 02-2436, p.5 (filed Oct. 18, 2002).

<sup>10</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Remand and Report and Order*, CC Docket No. 96-98 (FCC, April 27, 2001) at footnote 176. See also Comments of the Frontier and Citizens ILECs, CC Docket No. 01-92, DA 02-2436, p. 4 (filed Oct. 18, 2002).

<sup>11</sup> Comments of Montana Local Exchange Carriers, CC Docket No. 01-92, DA 02-2436, p. 5 (filed Oct. 18, 2002).



The Alabama Rural LECs support the suggestion that the Commission revise its existing rules to make it clear that “that CMRS providers have an affirmative obligation to negotiate and enter into interconnection compensation agreements with independent LECs” prior to terminating traffic to such LECs pursuant to arrangements with an RBOC.<sup>12</sup> This step, while helpful, would not obviate the need for back up tariffs in those instances where an agreement does not exist.

B. The Commission Should Not Strip State Commissions of Their Authority or Otherwise Limit Remedies Available to LECs Which Terminate CMRS Traffic.

CMRS providers have the same rights as all other parties to challenge or otherwise seek changes to LEC tariffs, as has been demonstrated in each state cited by the T-Mobile Petitioners. Allowing individual states to address any concerns with state CMRS interconnection tariffs is consistent with the established role of states in regard to interconnection agreements. States have a good record in successfully addressing disputed interconnection issues, a role contemplated under the Act.<sup>13</sup> CMRS providers are not subject to any further administrative burdens as a result of state CMRS interconnection tariffs than would result from establishment of individual interconnection agreements.<sup>14</sup> There is no other method for a rural LEC to obtain compensation

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<sup>12</sup> Comments of Frontier and Citizens ILECs, CC Docket 01-92, DA 02-2436, p. 8 (filed Oct. 18, 2002).

<sup>13</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, p 11.

for terminating the traffic of a CMRS provider that fails to obtain an interconnection agreement with the rural LEC prior to moving to meet point billing with the RBOC.

Finally, any Commission decision should acknowledge that even without a tariff a carrier may be compelled to compensate a terminating carrier pursuant to a state contract law or equitable principles.<sup>15</sup> The Commission has noted that “(t)here are three ways in which a carrier seeking to impose charges on another carrier can establish a duty to pay such charges: pursuant to (1) Commission rule; (2) tariff; or (3) contract.”<sup>16</sup> The FCC should not preclude the right of rural LECs to exercise other remedies to obtain compensation for the use of their facilities.

### III.

#### Conclusion

For the reasons stated above, the Alabama Rural LECs respectfully request that this Commission grant the declaratory ruling requested by US LEC to the extent necessary to affirm that the Rural LECs are due to receive access charges for intra-MTA CMRS-originated calls

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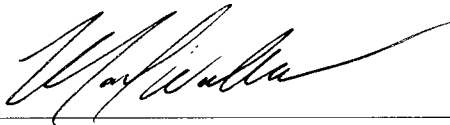
<sup>14</sup> It is notable that two of the three T-Mobile petitioners are seeking the ability to file tariffs in a separate proceeding in order to avoid “expensive, time-consuming and circuitous litigation.” Joint Comments of Western Wireless Corporation and Voicestream Wireless Corporation [now T-Mobile], *In the Matter of the Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling on Issues Contained in the Access Charge Litigation Sprint PCS v. AT&T*, WT Docket No. 01-316, at page 5 (FCC, December 12, 2001). The same considerations support the use of LEC tariffs to address compensation arrangements with CMRS providers, subject to the right of such providers to request interconnection agreements.

<sup>15</sup> *In the Matter of the Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges Issues*, WT Docket No. 01-316 (FCC, July 3, 2002).

<sup>16</sup> *Id.* at p 8.

involving an interexchange carrier and RBOC tandem and deny the declaratory ruling requested by the T-Mobile Petitioners.

Respectfully submitted,  
Alabama Rural LECs

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## CERTIFICATE OF SERVICE

I, Mark D. Wilkerson, hereby certify that on this 1st day of November, 2002, a true and correct copy of the above and foregoing REPLY COMMENTS OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS have been forwarded to the persons listed below via the method of delivery indicated:



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